

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Cellular Services and Other Commercial)
Mobile Radio Services in the Gulf of Mexico)

WT Docket No. 97-112

Amendment of Part 22 of the Commission's)
Rules to Provide for Filing and Processing of)
Applications for Unserved Areas in the)
Cellular Service and to Modify Other)
Cellular Rules)

CC Docket No. 90-6

SPRINT PCS REPLY COMMENTS

Sprint Spectrum, L.P., d/b/a Sprint PCS ("Sprint PCS"), limits this reply to the position taken by the one commenter, Stratos Offshore, that addressed PCS licensing in the Gulf of Mexico.¹ Stratos argues that the Commission "should not license PCS operations" in the Gulf.² None of the three reasons Stratos recites in support of its position has merit. More fundamentally, Stratos' position ignores the fact that the Commission has already issued PCS licenses to serve the Gulf — to Sprint PCS and to other coastal PCS licensees.

Stratos first argues that there is "no need" for PCS in the Gulf.³ This argument is not credible on its face.⁴ Stratos would have the Commission believe that in the Gulf there is a demand for *every* CMRS service except PCS:

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¹ See Comments of Stratos Offshore Services Company, WT Docket No. 97-112 (May 15, 2000).

² Stratos Offshore Comments at 10.

³ *Id.* at 12 ("[T]he principal industry in the GOM is not seeking the service."); *id.* ("Absent a showing by the oil and gas industry that PCS is needed . . . the Commission should refrain from introducing the service. No showing has been made.").

Stratos Offshore supports the Commission's proposal to license non-cellular CMRS spectrum . . . in the GOM as swiftly as possible. . . . [T]here is a demand for a wide-range of wireless spectrum and services in the GOM. There is no reasonable justifying for denying users in the GOM the benefits of telecommunications services that are available elsewhere in the United States. * * * The demand for wireless services in the GOM is real.⁵

Next, Stratos says that requiring it to move its microwave systems using the 1.8 MHz PCS band to other bands poses "potential safety risks."⁶ This allegation, *completely unsupported*, is also not credible. The owner of the microwave system that Stratos recently purchased has told the Commission that its 6 GHz microwave systems are as reliable, if not more reliable, than its older 1.8 GHz systems:

SOSCo currently provides a host of telecommunications services year-long using 6 GHz frequencies. SOSCo's 6 GHz paths have performed up to the 99.999% design criteria in all seasons. To say that a highly reliable telecommunications system cannot be built utilizing 6 GHz frequencies is false.⁷

Indeed, only months ago the Commission denied the request of an operator wanting to build a new microwave system in the Gulf using the 1.8 GHz PCS spectrum in part because the 6 GHz band offered the operator "a reasonable alternative."⁸

⁴ Stratos' argument here is also inconsistent with its position that "the Commission should not require a demonstration of demand before licensing non-cellular CMRS services in the GOM." *Id.* at 4 n.8.

⁵ *Id.* at 2 and 4.

⁶ *Id.* at 2. *See also id.* at 12 ("While this industry seeks a wide array of telecommunications alternatives in the GOM, it does not want to jeopardize its core telecommunications operations Introducing PCS in the GOM will disrupt critical communications."); at ii ("The Commission should not threaten the reliability of these [1.8 GHz] communications by introducing PCS in the GOM.")

⁷ Shell Offshore Petition for Reconsideration, Rig/Datacom proceeding, at 19 ¶ 32 (Sept. 30, 1998). *See also id.* at 17 ¶ 28 (A Gulf "system using frequencies in the 6 GHz band is highly reliable."); at 8 ¶ 13 (same).

⁸ *Rig Telephones, d/b/a Datacom Reconsideration Order*, DA 00-472, at ¶ 11 (March 2, 2000).

Finally, Stratos complains about “the high cost of displacing [its] microwave operations in the GOM.”⁹ Stratos makes this argument even though it readily concedes that “the Commission has already weighed the benefits and costs in favor of relocating and disrupting microwave operations in favor of PCS operations.”¹⁰ While Stratos asserts (again without any support) that the Commission did not intend to “blindly apply” its microwave relocation rules to the Gulf, the fact is that the Commission has already held that the relocation rules do apply to Gulf-based microwave systems. To take the most recent example, in prohibiting a Gulf operator from building a new microwave system in the Gulf using PCS spectrum, the Commission stated:

[T]he Commission developed rules designed to relocate [microwave] incumbents in these frequencies to other portions of the spectrum in order to foster the introduction of ET services, including PCS. The goals of the 2 GHz licensing rules are not only to limit relocation costs, but also to clear the 2 GHz spectrum.¹¹

As Stratos acknowledges, the Commission adopted its microwave relocation rules eight years ago.¹² Under those rules, a microwave licensee like Stratos must “cease operations” in the PCS band 10 years after the voluntary PCS negotiation period begins.¹³ The purchase price that Stratos paid for its Gulf microwave system undoubtedly reflected these relocation rules. To now permit Stratos to maintain its current 1.8 GHz system beyond this 10-year period would result in a financial windfall to Stratos to the financial detriment of PCS licenses — and would undermine the public interest of “clear[ing] the 2 GHz spectrum.”

⁹ Stratos Comments at 2.

¹⁰ *Id.* at 11.

¹¹ *Rig Telephones, d/b/a Datacom Reconsideration Order*, DA 00-472, at ¶ 15 (March 2, 2000).

¹² See Stratos Comments at 11 and n.23.

¹³ See 47 C.F.R. § 101.79(a).

There is a more fundamental flaw in Stratos' position. In arguing that the Commission should not issue PCS licenses in the Gulf, Stratos ignores the fact Sprint PCS has already acquired the PCS licenses necessary to provide PCS in the Gulf. In fact, Sprint PCS has paid over \$360 million for the coastal PCS licenses that authorize it to provide CMRS within the Gulf of Mexico, and it has paid additional millions in relocating microwave facilities in the Gulf — including facilities apparently now owned by Stratos.¹⁴

Some history is in order. In the early 1980s the Commission decided to license cellular carriers using MSAs and RSAs, areas that did not include water areas.¹⁵ The Commission therefore established separate cellular MSAs for the Gulf — a decision that has resulted in the intractable interference and other problems that the Commission continues to struggle with nearly 20 years later.

The Commission adopted a very different licensing plan for PCS. Drawing on its experience with cellular licensing, the Commission decided to license PCS using MTAs and BTAs — licenses that included the water areas, including the Gulf of Mexico.¹⁶ There was, therefore, no need for the Commission to establish separate PCS license areas for the Gulf.

Even if there was an ambiguity over the PCS licensing rules relative to the Gulf, the Chief of the Wireless Bureau removed that ambiguity on April 10, 1996 — *before* the 10 MHz PCS auction began — when it stated:

¹⁴ Sprint PCS holds 12 coastal PCS licenses: Miami MTA 15-A; New Orleans MTS 17-A; San Antonio MTA 33-A; Beaumont BTA 34D; Gainesville BTA 159-D; Houston BTA 196-D; Lake Charles BTA 238-D; Panama City BTA 340-E; Sarasota BTA 408-D; Tallahassee BTA 439-D; Tampa BTA 440-D; and Victoria BTA 456-D.

¹⁵ See, e.g., *Petroleum Communications*, 3 FCC Rcd 399 ¶ 5 (1988) (“Water areas were specifically excluded from MSA areas from the inception of cellular application licensing.”)

¹⁶ See, e.g., Sprint PCS Comments, Docket No. 97-112, at 2-4 (July 2, 1997).

Unlike cellular mobile service, there is no PCS licensee for the water areas of the Gulf of Mexico. Entities eligible to serve the Gulf of Mexico are the licensees of the BTA bordering on the Gulf.¹⁷

The bids Sprint PCS submitted for the coastal licenses in the 30 MHz PCS auction assumed that it had the right to serve the Gulf; and the bids it submitted for the coastal licenses in the 10 MHz PCS auction expressly relied on the Commission's determination that the coastal licenses included the right to serve the Gulf.

Sprint PCS does not deny that the Commission has the right to change its mind and to establish at this late date separate PCS license areas for the Gulf of Mexico. However, there would be significant financial consequences to the U.S. Treasury resulting from a Commission change of position. The Fifth Amendment to the U.S. Constitution provides in relevant part:

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.¹⁸

Thus, if the Commission now decides to establish separate PCS licenses for the Gulf, it should anticipate that Sprint PCS and other coastal PCS licenses will file lawsuits seeking a refund of some of their spectrum acquisition costs (plus interest); some of their Gulf microwave relocation costs (plus interest); and some of their network construction costs (plus interest) along the Gulf coast coastline.

One final point merits brief mention. Stratos asserts (once again, without any factual support) that no interference issues would be raised if the Commission established a sepa-

¹⁷ *Mobile Oil Telcom*, 11 FCC Rcd 5115 n.10 (1996). The full Commission endorsed this very position the next year. See *Maritime Communications*, 12 FCC Rcd 16949, 16964 ¶ 24, 16991 ¶ 83 (1997).

¹⁸ Sprint PCS recognizes that there are pre-auction decisions for the proposition that radio licensees do not have a property right in their license. However, Sprint PCS is confident that courts will find that its expenditure of hundreds of millions of dollars gives it a sufficient interest in its licenses that the FCC cannot modify those licenses without paying just compensation.

rate CMRS area for the Gulf and that as a result, there “appears to be no rationale for excluding the GOM as an equivalent [CMRS license area] relative to the Commission’s auction rules.”¹⁹

Stratos therefore concludes:

The Commission should apply the same service and operational requirements to CMRS licensees in the GOB that are applied to land-based licensees.²⁰

Stratos is simply wrong. The seemingly intractable interference problems between coastal and Gulf cellular licensees would never have occurred if there were a shred of evidence supporting Stratos’ position.²¹ What is more, Sprint PCS has previously documented to the Commission (*via* a sworn affidavit) that Gulf-based operations pose a special ducting interference problem to Sprint PCS’ sophisticated CDMA networks,²² and it is for this reason that Sprint PCS has already paid over \$3 million in relocating interfering microwave systems in the Gulf. In this regard, the Commission recently denied an applicant’s request to build a new Gulf microwave system using the PCS band because of the “difficulty” in “insolat[ing] any sources of interference.”²³ The Commission therefore rightly determined earlier this year that like PCS licenses, the new 700 MHz licenses should include the Gulf area to prevent “the difficult interfer-

¹⁹ Stratos Comments at 14.

²⁰ *Id.* at ii.

²¹ Interference issues are by no means the only problems relative to having separate Gulf CMRS licensees. For example, the comments further document the problem when cellular customers receive exorbitant roaming charges when they unknowingly roam on Gulf cellular systems. *See, e.g., ...* Gulf cellular licensees apparently charge exorbitant roaming rates to consumers in order to subsidize their service to such conglomerates as Gulf Oil.

²² Sprint PCS appends as Attachment A its October 21, 1999 petition to deny in File No. 97-7403. Attached to this petition is a declaratory of a RF engineer which explains the significant interference problems that CDMA carriers find with Gulf operations using PCS spectrum.

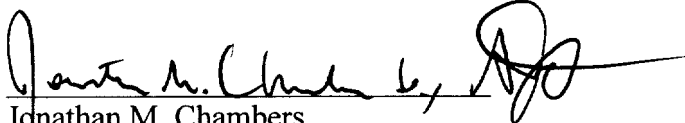
²³ *Rig Telephones, d/b/a Datacom Reconsideration Order*, DA 00-472, at ¶ 14 (March 2, 2000).

ence issues that has arisen in the past when one licensee served the Gulf and different licensee the adjoining land.”²⁴

The Commission has spent nearly 20 years attempting to resolve the interference and other problems raised by issuing separate cellular licenses for the Gulf of Mexico. Even ignoring the fact that the Commission has already authorized existing coastal PCS licensees to serve the Gulf, the last thing the Commission should consider entertaining is replicating this ongoing cellular controversy into the PCS arena.²⁵

Respectfully submitted,

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²⁴ 700 MHz Service Rules, WT Docket No. 99-168, FCC 00-5, 15 FCC Rcd 476, n.137 (Jan. 7, 2000). See also 47 C.F.R. § 27.6(b).

²⁵ See *Second Further NPRM*, 12 FCC Rcd 4576, 4578 ¶ 2 (1997) (“Our principal goals in this proceeding are (1) to establish a comprehensive regulatory scheme that will reduce conflict between water-based and land-based carriers.”).

CERTIFICATE OF SERVICE

I, Anthony Traini, hereby certify on that on this 30th day of May 2000, I served a copy of the foregoing comments by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

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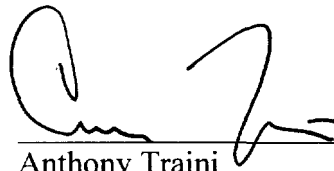
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Before the
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Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Rig Telephones, Inc. d/b/a Datacom)
)
Application for Modification of) File No. 9707403
Call Sign KYC 56)
_____)

SPRINT PCS PETITION TO DENY

Sprint Spectrum, L.P., d/b/a Sprint PCS ("Sprint PCS"), pursuant to Section 309(d) of the Communications Act,¹ petitions the Commission to deny the license modification application filed by Rig Telephones d/b/a Datacom ("Datacom") which the Commission put on public notice on September 22, 1998.²

Sprint PCS is a party in interest in this application proceeding involving the licensing of the PCS band in the Gulf of Mexico. Sprint PCS has paid over \$360 million for 12 coastal PCS licenses authorizing it to provide commercial mobile radio services ("CMRS") both

¹ See 47 U.S.C. 309(d). See also 47 C.F.R. § 101.43(a).

² See Wireless Telecommunications Bureau Weekly Receipts and Disposals, Report No. 2007, File No. 9707403 (Sept. 22, 1998). On August 31, 1998 the Private Wireless Division entered an order granting Datacom a waiver of several rules that appears to decide the merits of this still-pending license modification application. See *Rig Telephones, Inc. d/b/a Datacom, Request for Waiver of Part 101 of the Commission's Rules, Order*, DA 98-1739 (Sept. 1, 1998) ("Datacom Waiver Order"). Several parties have filed reconsideration petitions in response to this Order, and on October 16, 1998 Sprint PCS filed comments in support of these petitions. Sprint PCS hereby incorporates by reference the record being developed in that reconsideration proceeding.

along the Gulf,³ and within the Gulf.⁴ It has paid another \$3.4 million in relocating microwave facilities in the Gulf to remove harmful interference; and it has spent hundreds of millions of additional dollars in building state-of-the-art digital PCS networks to provide quality services to consumers in and around the Gulf.

Datacom, after deciding not to participate in the PCS auctions, now proposes to acquire and use *for free* the *same* spectrum in the *same* Gulf area apparently to provide the *same* common carrier services that Sprint PCS has paid for the authority to provide. In using this spectrum, Datacom would likely generate the very kind of harmful interference that Sprint PCS has been paying to eliminate (through microwave relocations). Sprint PCS demonstrates below that Datacom is not entitled to a grant of its application and that, because of Datacom's continuing failure to comply with applicable rules, the Commission cannot even consider the application.

I. Datacom Has Failed to Demonstrate Compliance with the Commission's Prior Frequency Coordination Rules, and Grant of Its Application Will Likely Cause Harmful Interference to Sprint PCS's Authorized Systems

Commission rules specify that the Bureau may consider a Part 101 license modification application only if the applicant completes frequency coordination "prior to filing an application." Rule 101.103(d)(1) provides in relevant part:

³ Sprint PCS's licenses include: Miami MTA 15-A; New Orleans MTA 17-A; San Antonio MTA 33-A; Beaumont BTA 34D; Gainesville BTA 159-D; Houston BTA 196-D; Lake Charles BTA 238-D; Panama City BTA 340-E; Sarasota BTA 408-D; Tallahassee BTA 439-D; Tampa BTA 440-D; and Victoria BTA 456-D.

⁴ Indeed, before Sprint PCS and others entered the 10 MHz PCS auctions, the Bureau confirmed that coastal PCS licensees would have the right to serve the Gulf. *See Mobil Oil Telcom*, 11 FCC Rcd 4115, 4116 n.10 (WTB, 1993)("[U]nlike cellular mobile service, there is no PCS licensee for the water areas of

Proposed frequency usage *must* be prior coordinated with existing licensees . . . whose facilities could . . . be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination *must be completed prior to filing an application* for regular authorization or an amendment to a pending application, or any major modification to a license.⁵

Datacom's application does not even allege, much less document, that it commenced *and completed* prior frequency coordination with respect to its proposed use of the PCS band. Consequently, the Bureau may not consider Datacom's application — and it may not entertain any new application until Datacom documents full compliance with Rule 101.103(d).

Datacom is of the view that “formal frequency coordination is neither necessary nor practical” because it “does not expect to encounter any frequency conflicts.”⁶ Suffice it to say that Datacom's personal view that Commission rules and requirements are “unnecessary” is not a sufficient reason to disregard those explicit rules and requirements.⁷

More fundamentally, Datacom is simply wrong in asserting, without any technical support, that its proposed system will not likely cause harmful interference to Sprint PCS and

the Gulf of Mexico. Entities eligible to serve the Gulf of Mexico are the licensees of BTAs bordering on the Gulf.”).

⁵ 47 C.F.R. § 101.103(d)(1)(emphasis added). *See also New Licensing Rules NPRM*, 13 FCC Rcd 9672, 9694 ¶ 49 (1998)(“[S]ection 101.103(d) of our rules *requires* all applicants seeking to amend applications or modify their authorizations to obtain a new frequency coordination.”)(emphasis added).

⁶ Letter from Nick Pugh, Datacom President, to STA Processing Technical and Licensing Branch, at 5 (July 2, 1998)(“Datacom STA Request”). This request does not begin to meet the requirements for grant of an STA. *See, e.g.*, 47 U.S.C. § 101.31(a)(2). Moreover, in direct violation of the rules, Datacom once again did not include with its STA request a “[c]ertification that prior coordination is complete.” 47 C.F.R. § 101.31 (a)(5)(xiii).

⁷ Indeed, the Commission reaffirmed the importance of prior frequency coordination only two years ago. *See Establishment of New Part 101*, 11 FCC Rcd 13449, 13474 ¶ 65 (1996).

other PCS licensees in and around the Gulf.⁸ The Commission itself has observed repeatedly that the provision of radio services in the Gulf region poses “unique challenges” because propagation characteristics across water are “unpredictable and are more extensive than contours over land areas.”⁹ In addition to the fact that signals in the PCS band travel well over water, licensees in the Gulf region face a phenomenon known as “ducting.”¹⁰ Caused by temperature inversions, ducting can result in a 1.8/1.9 GHz PCS band signal travelling significant distances — up to 10 times further than under normal atmospheric conditions. The problem with ducting is that it occurs for a relatively short duration, making it very difficult to identify the carrier generating the signal and to troubleshoot with that carrier to resolve the interference.¹¹

Sprint PCS and other PCS licensees currently serve the population centers and highways that are located on the Gulf coast. To serve these areas adequately, PCS licensees must transmit both inland and Gulfward, and this, in turn, makes their licensed systems especially

⁸ It bears emphasis that in proposing to acquire a secondary license, it is Datacom that has the legal obligation to ensure that its proposed system will not cause interference to PCS licensees. See 47 C.F.R. § 2.104(d)(4)(i). See also *Petroleum Communications*, 1 FCC Rcd 511, 516 n.16 (1986)(“Gulf licensees . . . have the duty to ensure frequency coordination with the land systems.”); *Petroleum Communications*, 2 FCC Rcd 3695, 2697 ¶ 18 (1987)(Gulf licensees “must take whatever action is necessary to give [coastal licensees] interference-free operation.”).

⁹ See *Gulf Licensing NPRM*, 12 FCC Rcd 4576, 4583 ¶ 13 (1997); *Unserved Cellular Service Area NPRM*, 6 FCC Rcd 6158, 6160 ¶ 14 (1991). See also *Petroleum Communications*, 2 FCC Rcd 3695, 3597 ¶ 17 (1987)(noting the “greatly increased propagation in the Gulf area.”).

¹⁰ Ducting refers to a situation where the signal becomes trapped between the water and a thermal inversion layer. See generally *Allocation of the 219-220 MHz Band*, 10 FCC Rcd 4446, 4450 n.43 (1995); *Amendment of Section 73.202(b)*, 10 FCC Rcd 2149, 2150 n.6 (1995); *Amendment of Section 73.606(b)*, 7 FCC Rcd 5601 n.4 (1992).

¹¹ Datacom’s specific proposal would make it very difficult for PCS licensees to identify it as the source of interference because Datacom wants the right to use the entire 140 MHz PCS band, thereby giving it the opportunity to move within that band from time to time.

vulnerable to interfering signals transmitted from the Gulf.¹² This interference problem is particularly acute for licensees like Sprint PCS that use advanced CDMA technology.¹³ Indeed, it was because of these kinds of problems that Sprint PCS has already expended over \$3.4 million in relocating point-to-point microwave facilities in the Gulf.

Commission rules require PCS licensees to coordinate with microwave licensees up 400 kilometers away from their PCS base stations.¹⁴ Point-to-point microwave signals can travel an even greater distance than PCS signals because microwave antennas are designed to concentrate their transmissions in one direction. Yet, without conducting any prior frequency coordination, Datacom proposes to construct its PCS band system that appears to be as close as 50 kilometers from the Gulf coast.¹⁵ Sprint PCS believes that with this short distance there is a high likelihood that Datacom's proposed system could cause harmful interference to its PCS systems¹⁶ — although it bears emphasis that it is Datacom that bears the burden of documenting that its proposed system will not cause harmful interference to others.¹⁷

¹² External interference can result in a Sprint PCS customer not being able to originate a call, having the call terminated prematurely, and/or experiencing poor call quality.

¹³ CDMA systems can receive signals at or near the noise floor. CDMA works by spreading all signals across the same broad frequency band and assigning a unique code to each traffic channel. The receiver discerns the dispersed signals by synchronizing with the base transmitter code. This dispersal of signals over a broad frequency band results in a relatively low energy per Hertz. Accordingly, CDMA is much more susceptible to interference than other technologies such as TDMA that do not spread all signals across a broad frequency band, given that the CDMA signals are closer to the noise floor.

¹⁴ See 47 C.F.R. § 24.237(d).

¹⁵ See Letter from Nick Pugh, Datacom President, to Ted Ryder, FCC Licensing and Technical Analysis Branch (Aug. 24, 1998). Attached is a map that illustrates the area Datacom wants to use the spectrum and the relationship of that area to the Gulf coast.

¹⁶ See Declaration of Tony Sabatino, appended hereto.

¹⁷ See note 8 *supra*.

Sprint PCS and others acquired their PCS licensees with the expectation that no one other than incumbent microwave licensees would be able to operate in their bands and that the only interference issues they would face would involve incumbent licensees. PCS licensees certainly did not expect that the Commission would allow other, non-incumbent licensees to deploy new systems in the PCS band that would generate new interference problems for them.¹⁸

II. Datacom Is Not Eligible to Use the Same Spectrum Sprint PCS Paid For, and Grant of Datacom's Application Would Not Be in the Public Interest

Commission rules specify that an application for spectrum governed by Part 101 “will be granted *only* in cases in which it is shown that . . . [t]here are frequencies available . . . and . . . [t]he public interest, convenience, and necessity would be served by a grant thereof.”¹⁹ Datacom has not demonstrated that its application meets either of these conditions.

In the first place, there are no frequencies in the PCS band available for assignment to Datacom; the spectrum has already been acquired by Sprint PCS and other PCS licensees — which paid the government handsome fees for this right. Datacom could have acquired the same spectrum rights — *had* it chosen to participate in the PCS auctions.

Furthermore, the Commission has established a procedure for entities like Datacom that want the opportunity to use this assigned spectrum: negotiate a partitioning

¹⁸ It is no answer for Datacom that acknowledge that it “will have to cease transmissions if its use of the frequencies in the 1850-1990 MHz band interfere with PCS operations.” Datacom Opposition to Petitions for Clarification and Reconsideration at 16 (Oct. 15, 1998). Customers of PCS licensees should not face the problems that interference can cause (*see* note 12 *supra*) while Sprint PCS and other licensees attempt to convince Datacom to close down its interfering system. PCS licensees paid for their spectrum rights precisely to avoid these kinds of new problems ,

¹⁹ 47 C.F.R. § 101.701(a)(2) and (3)(emphasis added).

agreement with one or more PCS licensees.²⁰ It appears that Datacom hopes to avoid having to negotiate a partitioning agreement by convincing the Commission to give it access to the same spectrum for free. In this regard, the Fifth Amendment to the Constitution guarantees that Sprint PCS's property rights will not be taken without just compensation.²¹

Nor is the public interest served by grant of Datacom's application. Datacom wants the ability to provide commercial common carrier services using the very spectrum that PCS licensees have already paid for. Giving Datacom spectrum for free to provide competing services would give Datacom an unfair competitive advantage in the market. However, allowing Datacom to compete with PCS licensees using the same spectrum they paid for is unconscionable.²²

Moreover, grant of Datacom's application would impair the value of the coastal PCS licenses held by Sprint PCS and others and will undermine the valuation process in future spectrum auctions. Firms will question the wisdom of participating in future auctions if the Commission establishes a precedent of re-assigning auctioned frequencies to others. In short, even if the Commission were to ignore the procedural infirmities of Datacom's application, there still would be no basis to grant the application.

²⁰ See *Geographic Partitioning of CMRS Licenses*, 11 FCC Rcd 21831 (1996); 47 C.F.R. § 24.714.

²¹ Moreover, Datacom has not even begun to establish its need for use of the PCS band. As Sprint PCS demonstrated in its October 16, 1998 reconsideration comments, Datacom's argument that its 6 GHz license is inadequate is rebutted by Shell Offshore's actual experience, and Datacom has not even attempted to argue that its 2.1 GHz system is inadequate for its proposed common carrier operations.

²² Datacom therefore misstates the issue in asserting that PCS licensees, which operate in fiercely competitive markets, have an expectation that "they will be immune from competition in the provision of communications services." Datacom Opposition to Petitions for Clarification and Reconsideration at 14 (Oct. 15, 1998).

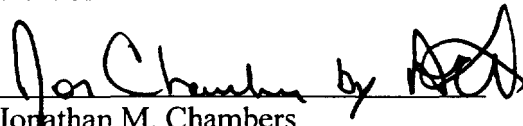
Conclusion

For the foregoing reasons, Sprint PCS respectfully requests that the Commission deny Datacom's application modify license KYC56 to add the PCS spectrum Sprint PCS has already paid for and to use that spectrum to provide common carrier services that would compete with Sprint PCS's own services.

Respectfully submitted,

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October 21, 1998

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Anthony Traini

DECLARATION OF TONY SABATINO

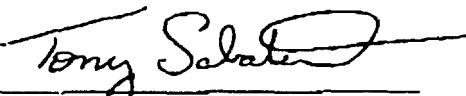
I, Tony Sabatino, state as follows:

1. I am the Director, RF Engineering, for Sprint Spectrum, L.P. d/b/a Sprint PCS. Sprint PCS holds either an A or D block PCS license covering the coast of the Gulf of Mexico. In this regard, the FCC has declared that coastal PCS licensees are authorized to serve the water areas of the Gulf as well. I have a Bachelor of Science Degree in Electrical Engineering from the University of Kansas, and in my position I have responsibility for the design, implementation, and performance of Sprint PCS's PCS systems in and around the Gulf.

2. I am knowledgeable about the issues relative to PSC radio frequency ("RF") and network engineering in coastal and offshore areas of the Gulf. My experience also includes work in frequency coordination and interference analysis in the Gulf of Mexico's offshore areas. In this regard, I have also been involved in microwave clearing of point-to-point microwave licensees in the 1850-1900 MHz band that was reallocated to PCS, including relocation activities in the Gulf of Mexico coastal and offshore areas.

3. I have reviewed the foregoing petition to deny and have personal knowledge of the facts contained therein as they related to Sprint PCS. In my judgment, the petition accurately discusses both the radiowave propagation issues posed in the Gulf and the possible significant interference difficulties that would be created for Sprint PCS's authorized and operational systems if Datacom's operations in the 1850-1990 MHz band were permitted. Such interference could disrupt service to Sprint PCS's customers, resulting in dropped calls, blocked calls, and degraded call quality. This interference problem is particularly acute for Sprint PCS because it uses the advanced CDMA air interface technology which receives signals at or near the noise floor and which works by spreading all signals across the same frequency band and assigning a unique code to each traffic channel.

4. I hereby state that the facts contained in the petition and in this declaration are true to the best of my knowledge, information, and belief.


Tony Sabatino

Dated: October 21, 1998

